

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

3 UNITED STATES OF AMERICA ) Docket No. A 12-CR-210 (6) SS  
4 vs. )  
5 FRANCISCO ANTONIO ) Austin, Texas  
6 COLORADO-CESSA )  
7 ) January 25, 2013

7 TRANSCRIPT OF PENDING MOTIONS/STATUS CONFERENCE  
8 BEFORE THE HONORABLE SAM SPARKS

8 APPEARANCES:

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22  
23  
24  
25 Proceedings reported by computerized stenography, transcript  
produced by computer.

10:57:54 1 THE COURT: I understand there's one set of microphones  
10:57:58 2 and the interpreter's gone to get them.

10:58:00 3 THE CLERK: He did.

11:00:01 4 THE COURT: All right. You gentlemen who have the  
11:00:03 5 headphones, so that you can understand the translation into  
11:00:09 6 Spanish, if it's working, raise your hand. All right. Let the  
11:00:38 7 record reflect we've now taken care of that.

11:00:43 8 This is 12-CR-210. This is a motion hearing. I have  
11:00:50 9 motions filed only on three defendants. On Defendant No. 3, Jose  
11:00:56 10 Trevino-Morales, I have motions to produce transcripts, motion to  
11:01:04 11 require the government to produce witness and exhibit lists, the  
11:01:08 12 request for the Court to review in camera the presentence  
11:01:13 13 reports/notes, sentencing transcripts, and plea colloquies of the  
11:01:25 14 government's cooperating witness for Brady and Giglio materials.  
11:01:29 15 It's a new one on me. Motion for disclosure of NCIC and TCIC  
11:01:35 16 criminal backgrounds and immigration, and another motion to  
11:01:38 17 produce transcripts that was handed to me this morning, way  
11:01:44 18 beyond the deadline. But I've never enforced the deadline. I  
11:01:50 19 just remember the lawyer.

11:01:55 20 The fourth defendant is Zulema Trevino, and I have  
11:02:01 21 their motion to compel compliance with the Court's standing  
11:02:04 22 discovery order, and wanting Giglio and Jencks material, witness  
11:02:10 23 names earlier than Friday before the trial. We'll discuss that,  
11:02:13 24 of course. And then, on Francisco Antonio Colorado-Cessa, I have  
11:02:18 25 a motion to depose witnesses, which I have reviewed the motion

11:02:25 1 and the government's response on that.

11:02:27 2 So let's take Jose Trevino-Morales first. The  
11:02:34 3 defendant need not come up. He's in the courtroom. He can  
11:02:37 4 listen where he is.

11:02:38 5 Mr. Finn, you have the lectern. Why don't you tell me  
11:02:43 6 what you are wanting, and let's find out where you are.

11:02:48 7 MR. FINN: Yes, your Honor.

11:02:48 8 THE COURT: I've been running for over 20 years an open  
11:02:52 9 file, pretty much, discovery. The only problem is when it opens.  
11:03:02 10 And as a general rule, particularly in cases such as this one  
11:03:07 11 where there are a lot of defendants and a lot of interest from  
11:03:11 12 non-defendants, I require the identification of the witnesses. I  
11:03:20 13 say I require. I request, frankly, the government to give the  
11:03:24 14 identity of the witnesses on the Friday before jury selection and  
11:03:33 15 then, the order of witnesses on a daily basis.

11:03:41 16 Then on the transcripts, what transcripts are you  
11:03:44 17 missing?

11:03:44 18 MR. FINN: Judge, transcripts that I'm referring to are  
11:03:48 19 the jail transcripts. The government's been recording almost all  
11:03:53 20 conversations involving all defendants, all witnesses for quite  
11:03:58 21 some period of time, and what I'm trying to avoid is a scenario  
11:04:02 22 where they drop that on me Friday afternoon, before Monday trial.  
11:04:07 23 You know, these recordings that are probably going to be in  
11:04:09 24 Spanish, which I am not fluent in. I'm just trying to make sure  
11:04:14 25 that I'm prepared and that I don't waste your time or the jury's

11:04:19 1 time.

11:04:19 2 THE COURT: Well, first off, it's the jails that are  
11:04:21 3 recording all of the conversations, not necessarily the  
11:04:23 4 government, but the government has access to them, obviously.  
11:04:27 5 What is the situation with jail recordings?

11:04:31 6 MR. GARDNER: Your Honor, we're prepared to deliver  
11:04:34 7 them Friday before trial, the jail recordings. This also goes to  
11:04:38 8 Ms. Zulema Trevino's motion. I've already checked with the one  
11:04:41 9 cooperating witness that we've disclosed, Mr. Jose Carlos  
11:04:45 10 Hinojosa. He was originally incarcerated in McAllen. The  
11:04:48 11 prosecutor down there did not pull the jail calls, and he's been  
11:04:51 12 since moved. And so, those jail calls, to my knowledge, have  
11:04:54 13 expired, so they've recorded over them; so those aren't  
11:04:57 14 available.

11:04:57 15 I'm attempting to get from the other jurisdictions  
11:05:01 16 identified what facilities they're incarcerated in. So I believe  
11:05:05 17 these are Jencks material. I'm prepared to disclose them Friday  
11:05:07 18 before trial if I can get my hands on them.

11:05:09 19 THE COURT: Will they have translations on them?

11:05:12 20 MR. GARDNER: Probably not, your Honor. I'm not sure  
11:05:17 21 if Mr. Hinojosa is a Spanish speaker, but I am aware that some of  
11:05:21 22 the other cooperators are Spanish speakers.

11:05:23 23 THE COURT: Well, then, are you just going to disclose  
11:05:32 24 to each defendant, a defendant's own telephone conferences?

11:05:38 25 MR. GARDNER: Your Honor, I have been doing that to

11:05:39 1 some extent. One of the issues, not that the Court's concerned  
11:05:43 2 about it, is the multiple sites these people were arrested. So I  
11:05:47 3 have gotten some of the defendants' jail calls, and I've provided  
11:05:49 4 some of those. I can continue to do so when these come in from  
11:05:53 5 California and New Mexico. I can't recall right now. I know  
11:05:59 6 some of them are in Spanish, and I'll provide those as soon as I  
11:06:02 7 can. I know Mr. Cessa's in Spanish. His jail calls are in  
11:06:05 8 Spanish. And I know Mr. Farias and Mr. Quintero, I believe, were  
11:06:09 9 in English. So I'll provide the defendants as soon as I get  
11:06:12 10 them.

11:06:12 11 THE COURT: What about since we're in April, the trial,  
11:06:19 12 what about giving -- I'm not concerned about the Friday before  
11:06:30 13 trial with a translation, but I am concerned with not having  
11:06:40 14 them, say, nine days before trial, like the Friday before the  
11:06:43 15 Friday for trial, the telephone conversations with the -- that  
11:06:53 16 gives, at least, the defendant the opportunity of a week to get  
11:06:56 17 translated. But you're going to give counsel a translation of  
11:07:00 18 any telephone call you intend to use.

11:07:03 19 MR. GARDNER: Absolutely, your Honor. And my goal on  
11:07:04 20 that -- maybe I misspoke -- is if it's a defendant's call, they  
11:07:08 21 should get the tran -- they'll get the disc, whether it's Spanish  
11:07:11 22 or English. If I intend to use that, I'll produce a transcript  
11:07:14 23 well in advance of nine days of trial.

11:07:16 24 THE COURT: Okay. All right. But let's try to get all  
11:07:20 25 of those that you're not going to use in Spanish, say, ten days

11:07:28 1 before jury selection, and then, they can get -- maybe just their  
11:07:33 2 waste of time, but they could get somebody to review it and find  
11:07:36 3 out.

11:07:37 4 MR. GARDNER: And you're speaking with respect to the  
11:07:38 5 defendants' jail calls, your Honor?

11:07:40 6 THE COURT: Yes. Just the defendants right now.

11:07:41 7 MR. GARDNER: Yes, sir. Thank you. No problem.

11:07:43 8 THE COURT: Because they're going to have whatever jail  
11:07:45 9 calls you intend to use. They'll have that in translation as  
11:07:49 10 well as Spanish.

11:07:50 11 MR. GARDNER: Yes, sir.

11:07:50 12 THE COURT: And then, they can examine the Spanish.

11:07:54 13 MR. FINN: Judge, thank you. If we've got the  
11:07:56 14 transcript the Friday before the Monday trial, that would be  
11:08:01 15 ideal. If they're not going to give us the transcript or the  
11:08:06 16 conversations transcribed, if you -- as you've just done, I  
11:08:10 17 think, give us seven to ten days for us to go ahead and have  
11:08:13 18 somebody transcribe it for us or translate it, that would be  
11:08:17 19 ideal.

11:08:17 20 One last housekeeping matter on this point, if I can,  
11:08:21 21 Judge. I've never tried a case before you, but I've asked around  
11:08:24 22 and I've been told.

11:08:26 23 THE COURT: You just missed the opportunity of a  
11:08:28 24 lifetime.

11:08:29 25 MR. FINN: I know. That's what I've heard. That you

11:08:33 1 run a tight ship, you don't like surprises, and you don't like  
11:08:38 2 people wasting your time, or the jury's time, or a waste of time.  
11:08:42 3 So I'm going to ask you, Judge, just to be clear in my mind, if  
11:08:50 4 the government calls one of its four or five or six confidential  
11:08:54 5 informants and they've told me the name of one of them, if this  
11:08:58 6 person has been communicating with the government and making  
11:09:01 7 phone calls from jail that have been recorded, I don't want to  
11:09:05 8 get that conversation in Spanish, you know, dumped on me the day  
11:09:11 9 before trial or during trial. That's what I'm trying to avoid.

11:09:15 10 So to the extent that -- and Mr. Gardner and I have  
11:09:18 11 worked together fine. There are no issues that I'm aware of  
11:09:21 12 between the two of us. But I'm trying to sort of give you a  
11:09:24 13 roadmap as to why -- if you either require them to transcribe it  
11:09:29 14 or give it to us in advance, then I won't be wasting your time.

11:09:33 15 THE COURT: Well, I can assure you, you're not going to  
11:09:36 16 waste my time. My time is cheap. And secondly, this is my 50th  
11:09:41 17 year in the business, I don't think you need to give me any real  
11:09:44 18 advice. Thank you for offering.

11:09:47 19 Okay. So we've got the transcripts. Motion to produce  
11:09:50 20 witness and exhibit lists.

11:09:53 21 MR. FINN: Same reason, Judge.

11:09:54 22 THE COURT: What is the situation there?

11:09:56 23 MR. GARDNER: Your Honor, the government, as we stated  
11:09:58 24 in our response, has no issue with producing an exhibit list 14  
11:10:02 25 days in advance, with the understanding that we would modify or

11:10:04 1 amend that exhibit list as needed. So we have no objection to  
11:10:08 2 that request.

11:10:09 3 THE COURT: Well, since they're not entitled to it and  
11:10:11 4 they're going to take it because of the open policy that we  
11:10:15 5 practice here, which is good, I suspect that will be sufficient.  
11:10:19 6 So 14 days.

11:10:20 7 MR. FINN: That's fine.

11:10:21 8 THE COURT: To get if we have -- you know, also, I've  
11:10:26 9 never been in a case as a lawyer or a judge where there wasn't a  
11:10:30 10 few surprises. If there are a few surprises, we'll handle it.  
11:10:34 11 But I know the U.S. Attorney who -- see, you just come in and  
11:10:39 12 have a vacation with me and go off across the United States.  
11:10:42 13 They have to stay with me all the time, so they listen to the --  
11:10:47 14 and abide by their own rules.

11:10:50 15 Fourteen days and if there is a chance, you'll give  
11:10:53 16 them immediate notice.

11:10:55 17 MR. GARDNER: Yes, sir. On the witness list, your  
11:10:57 18 Honor, however, we intend to abide by this court's longstanding  
11:10:59 19 practice of providing that the Friday before trial with, as the  
11:11:03 20 Court stated, giving them notice of the next day's order.

11:11:07 21 THE COURT: Yeah. And I'm not going to order otherwise  
11:11:11 22 on that for obvious reasons. However, you will get that on  
11:11:14 23 Monday, anyway, on the jury selection.

11:11:17 24 MR. FINN: Okay.

11:11:21 25 THE COURT: Okay. What do you want me to in camera?



11:11:25 1 MR. FINN: Judge --

11:11:26 2 THE COURT: I hope you saw the paperwork I get every  
11:11:28 3 day, earlier.

11:11:29 4 MR. FINN: I did, Judge. I'll tell you why I'm asking  
11:11:32 5 for this. Earlier this week, in a different federal court, Judge  
11:11:36 6 Hittner's court in Houston, we had the sentencing of one of my  
11:11:41 7 clients in the Allen Stanford case, and Judge Hittner, on his  
11:11:44 8 own, asked the probation department to provide him with their  
11:11:49 9 notes regarding an interview with a --

11:11:57 10 (Sound from gallery.)

11:11:57 11 THE COURT: It's okay. It's just a baby.

11:11:59 12 MR. FINN: Okay. Interview notes in a presentence  
11:12:02 13 report of a codefendant witness that he found and I found very  
11:12:07 14 enlightening. It's been my experience that many times, people  
11:12:12 15 say certain things in a presentence interview that may not make  
11:12:18 16 it into the presentence report, and I've been able to use that  
11:12:22 17 successfully in the past when I'm cross-examining witnesses that  
11:12:25 18 are trying to leave a false impression with the jury. So that's  
11:12:30 19 why I'm asking for that.

11:12:34 20 THE COURT: Well, I don't know that I've set any  
11:12:38 21 sentencings in this case.

11:12:41 22 MR. GARDNER: You have not, your Honor. I believe what  
11:12:42 23 Mr. Finn is referring to is the potential cooperating individuals  
11:12:47 24 who are facing criminal charges in other districts.

11:12:50 25 MR. FINN: That's correct.

11:12:51 1 THE COURT: Okay.

11:12:52 2 MR. GARDNER: Your Honor, the government has -- will  
11:12:54 3 most likely have access to all the presentence reports through  
11:12:57 4 the other prosecutors. And I'm aware of my Brady obligations,  
11:13:02 5 and I'll look at those presentence reports or have those other  
11:13:05 6 assistant United States attorneys look at them for any Brady or  
11:13:09 7 Giglio. I have not asked --

11:13:10 8 THE COURT: If their law is the same as the Western  
11:13:12 9 District, you're going to have to have the Judge's permission to  
11:13:16 10 look at those. You'll have to have the U.S. Attorney look at  
11:13:21 11 them there and then, give you some reports so you can report it  
11:13:24 12 back here and --

11:13:27 13 MR. FINN: That's right.

11:13:28 14 THE COURT: And I don't anticipate that you're going to  
11:13:30 15 get a whole lot of cooperation from busy prosecutors in other  
11:13:34 16 districts that are busy.

11:13:38 17 MR. GARDNER: And I know just from pretrial, the  
11:13:41 18 probation officer in this division, your Honor, notes that Mr.  
11:13:43 19 Finn talks about could include the entire case discovery that  
11:13:48 20 that defense attorney was provided. So I am sure the Court  
11:13:52 21 doesn't want to look through discovery of another 56 CD wiretap  
11:13:57 22 case that is what Mr. --

11:13:59 23 MR. FINN: No, of course not, Judge. That's not where  
11:14:01 24 I'm going with this.

11:14:02 25 THE COURT: If I could go to France and do it, I'd do

11:14:04 1 it. Other than that.

11:14:06 2 MR. FINN: Or at least Canada.

11:14:08 3 THE COURT: No. I don't think so. Last time I was in  
11:14:10 4 Canada, it was 41 below zero, and that's even too cold for  
11:14:16 5 presentence reports. Okay.

11:14:22 6 All right. If there comes up a problem, then you can  
11:14:28 7 do that. But right now, there's no way for me to do anything  
11:14:30 8 that's out of this district. Plus the fact, probably not even  
11:14:34 9 out of the division. I'm sure I could get any of the judges that  
11:14:43 10 work with me in this district's authority to release presentence  
11:14:48 11 reports to the U.S. Attorney here in Austin and to -- but, you  
11:14:59 12 know, it just depends. It depends on what's in them because  
11:15:02 13 there's some presentence report that no judge in his right mind  
11:15:05 14 is going to let anybody else see.

11:15:06 15 MR. FINN: That's fine, Judge. And I respect that.  
11:15:08 16 And I was in the courtroom for your earlier sentencing and I  
11:15:11 17 understand that. But it's been my experience, because I've done  
11:15:16 18 this before, where the government's got a cooperating informant  
11:15:19 19 who takes the witness stand, basically lies his you know what  
11:15:25 20 off. I can't prove it unless I've got something in the  
11:15:29 21 presentence report that allows me to expose the lie, if you will.  
11:15:35 22 So I'm not looking for wiretaps. I'm not looking --

11:15:38 23 THE COURT: Interesting. Now I've got criminal defense  
11:15:42 24 lawyers trying to rely on a presentence report rather than trying  
11:15:45 25 to destroy it.

11:15:46 1 MR. FINN: That's right. Exactly, your Honor. And I'm  
11:15:49 2 not saying that I should see it. I'm not saying I'm entitled to  
11:15:52 3 it. I know it's got privileged information.

11:15:55 4 THE COURT: Well, let me just say this. I've not had a  
11:15:59 5 case yet, in all of these years, that the U.S. Attorney Office  
11:16:03 6 here in Austin has ever had any post-sentencing hearings of any  
11:16:09 7 nature or anything on information that could have been used in  
11:16:16 8 cross-examination of a witness, whether it be called Brady,  
11:16:20 9 whatever it's going to be called. I don't anticipate a problem.  
11:16:23 10 If there's a problem, we will handle it. And if you've got a  
11:16:26 11 specific person, then get with Mr. Gardner and perhaps he can  
11:16:34 12 find it.

11:16:35 13 I don't know of anybody who is indicted in this case  
11:16:42 14 who's going to be interviewed by any other presentence or  
11:16:47 15 probation department. And since none of them have been set and  
11:16:52 16 my probation officers are very busy, I doubt if there's any notes  
11:16:57 17 at all, yet, of anybody that's indicted in this case. Where's my  
11:17:02 18 probation officer?

11:17:04 19 PROBATION OFFICER: She went back to her office.

11:17:06 20 THE COURT: Yeah. They know to run when they can.

11:17:09 21 Okay. Well, I'll keep that in mind. But at the  
11:17:11 22 present time, I don't intend to do presentence notes,  
11:17:17 23 transcripts, or plea colloquies unless there comes a reason and,  
11:17:23 24 if so, then I will.

11:17:26 25 How about NCIC and TCIC reports?

11:17:31 1 MR. GARDNER: Your Honor, again, Friday before trial,  
11:17:33 2 along with any plea agreements, any proffer letters, any immunity  
11:17:39 3 agreements by any of the cooperating witnesses, or any of the  
11:17:41 4 witnesses for that matter.

11:17:43 5 MR. FINN: Judge, before you decide that, with all due  
11:17:46 6 respect, that's not good enough. They've got three or four or  
11:17:49 7 five or six confidential informants that are ghosts to me. I  
11:17:56 8 don't know who they are. I don't know where they've been. I  
11:17:58 9 don't know what they've done. I can't cross-examine a ghost.  
11:18:01 10 And if he drops an FBI background check on me Friday before a  
11:18:06 11 Monday trial, how in the world can I go out and dig around in  
11:18:12 12 that confidential informant's background and determine whether or  
11:18:15 13 not they're credible or not? Friday before a Monday trial? Why  
11:18:19 14 would they do that?

11:18:21 15 THE COURT: Well.

11:18:22 16 MR. FINN: Because they can?

11:18:24 17 THE COURT: That's what the law says.

11:18:26 18 MR. FINN: But you've got discretion and you can say, I  
11:18:29 19 don't want Finn to stand up in a jury trial and ask for a  
11:18:32 20 continuance because he needs three days to go run these traps on  
11:18:35 21 these informants.

11:18:36 22 THE COURT: First twelve years of my practice -- and  
11:18:39 23 I've tried an awful lot of lawsuits -- I wasn't even allowed to  
11:18:43 24 know who the witnesses would be. I had to cross-examine them. I  
11:18:45 25 had to say, who is this John Smith they're calling, or whatnot,

11:18:48 1 civil and criminal.

11:18:49 2 MR. FINN: I bet you didn't like that.

11:18:51 3 THE COURT: Oh, it made you a pretty good lawyer.

11:18:53 4 MR. FINN: I bet it did. But my point is, they can  
11:18:57 5 provide this like that, and I cannot access it because I'm not  
11:19:01 6 law enforcement. I'm just asking for a little bit of courtesy.

11:19:09 7 THE COURT: Sometimes I get them to do it the night  
11:19:13 8 before because it helps the trial move along. Sometimes I get  
11:19:18 9 them to do it a Friday. They have their own reasons why they  
11:19:22 10 don't want to show that.

11:19:23 11 MR. FINN: Not a good reason, Judge.

11:19:25 12 THE COURT: Oh, yes. Death of a person can be a good  
11:19:29 13 reason. Unavailability of a witness can be a good reason. I  
11:19:32 14 don't know what their reasons are. But I do know that Mr.  
11:19:36 15 Gardner will get it to you on Friday before, and if he can get  
11:19:43 16 them before then, I will want him to do it.

11:19:46 17 MR. FINN: Okay.

11:19:47 18 THE COURT: But I'm not going to order him because I'd  
11:19:49 19 have to go through each one of those and see if there's a special  
11:19:52 20 reason, and that's none of my business right now.

11:19:55 21 MR. FINN: Okay.

11:19:56 22 THE COURT: When the evidence comes in -- now he knows,  
11:19:58 23 also, I don't want to take much of a break in the trial and if  
11:20:04 24 you have to stay there and say, I need 20 minutes, or 30 minutes,  
11:20:07 25 or whatnot, you know, I have to give it to you, just like I have

11:20:12 1 to give him the benefit of the law. After a couple of gifts like  
11:20:18 2 that, though, my comment to the jury that you're a slow reader or  
11:20:22 3 something.

11:20:22 4 MR. FINN: Which is true. I am a slow reader.

11:20:25 5 THE COURT: Well, that's third is the most important  
11:20:32 6 not to speak.

11:20:36 7 All right. So if you're convinced, Mr. Gardner, that  
11:20:42 8 there's no handicap, or danger, or anything, on that basis, I  
11:20:45 9 will appreciate your getting those to counsel before Friday, but  
11:20:50 10 I'm not going to order it before Friday.

11:20:52 11 MR. GARDNER: I can represent to the Court that for the  
11:20:54 12 one I have identified, as soon as I get a hold of that  
11:20:56 13 information, it's the plea agreement -- well, they can request a  
11:21:03 14 plea transcript or sentencing transcript. I've given them the  
11:21:06 15 name, the cause number. But with respect to NCIC, TCIC and plea  
11:21:11 16 agreement, I'll provide those as soon as I can get them, your  
11:21:13 17 Honor.

11:21:13 18 THE COURT: All right.

11:21:14 19 MR. FINN: Thank you, Judge.

11:21:14 20 THE COURT: Yes, sir.

11:21:15 21 MR. FINN: And can I just build on one thing? I need  
11:21:19 22 to know who these informants are in advance of trial so I could  
11:21:22 23 be prepared to cross-examine them. And I need your help, Judge.  
11:21:29 24 I'm asking for your help. I need to know who these people are so  
11:21:33 25 that I can do my job.

11:21:39 1 THE COURT: Well, all I can do is give you two days to  
11:21:44 2 prepare, and then, each night, you'll know who's going to testify  
11:21:51 3 the next day. If you can represent all these big people like  
11:21:57 4 Stanford and codefendants, then I believe you can handle it. And  
11:22:01 5 it's not my job to help you. It's my job to preside over a trial  
11:22:05 6 and make sure it's a fair trial, and I will do that.

11:22:09 7 MR. FINN: Okay.

11:22:10 8 THE COURT: All right. Now, you also filed another  
11:22:13 9 motion for transcripts last night. What is that about?

11:22:17 10 MR. FINN: Judge --

11:22:18 11 THE COURT: I haven't seen it.

11:22:19 12 MR. FINN: I shared this information with Mr. Gardner,  
11:22:22 13 but we filed it -- I made a mistake. We filed it with the wrong  
11:22:26 14 heading on it. So.

11:22:27 15 THE COURT: Just a duplication?

11:22:29 16 MR. FINN: Yes, sir. Yeah.

11:22:30 17 THE COURT: Okay. That's no problem.

11:22:31 18 MR. FINN: And, Judge, can I -- because I know you  
11:22:33 19 don't like surprises. I don't know, maybe you do. You said --

11:22:38 20 THE COURT: At my age, surprise sometimes is good.

11:22:41 21 MR. FINN: Well, I'm trying to make it a pleasant  
11:22:43 22 surprise and avoid the unpleasant surprises. There's an issue  
11:22:47 23 that I spoke with the government about. I walked over this  
11:22:49 24 morning with Mr. Gardner. And he and I have worked well  
11:22:53 25 together. There are no issues in terms of communication. He's



11:22:56 1 been very, very professional.

11:22:59 2 THE COURT: I think you'll find that across the board.

11:23:02 3 MR. FINN: Okay. Well, that's my experience with him,  
11:23:04 4 anyway. In some cases, I have to file or the judges want me to  
11:23:10 5 file Bruton motions in advance of trial, and other judges say,  
11:23:15 6 no, Finn, that's an evidentiary issue, just raise it during  
11:23:18 7 trial.

11:23:20 8 I anticipate that there will be a Bruton issue. Mr.  
11:23:22 9 Gardner knows about it. We've discussed it. I've showed him the  
11:23:26 10 motion that I haven't yet filed, and it relates to a hard drive  
11:23:29 11 computer belonging to my client's daughter, who's a defendant now  
11:23:34 12 who's in the courtroom. And I think the government's going to  
11:23:36 13 try to use some of that information in our joint trial against my  
11:23:43 14 client. And obviously if she doesn't testify, it creates a  
11:23:46 15 confrontation clause issue. I can't cross-examine a defendant,  
11:23:50 16 et cetera, et cetera.

11:23:51 17 So I just wanted you to know that that's coming and ask  
11:23:54 18 you, do you want me to file the Bruton motion or just wait till  
11:23:57 19 trial?

11:23:58 20 THE COURT: Well, you know, if Bruton comes up in my  
11:24:02 21 crystal ball here, you don't have to file it.

11:24:04 22 MR. FINN: It will come up.

11:24:05 23 THE COURT: Well, I would file it if I were you.

11:24:09 24 MR. FINN: Okay. That's what I'll do.

11:24:10 25 THE COURT: I can't rule on an oral motion. The only

11:24:12 1 person was Judge Eddie Berliner (phonetic), and he was a great  
11:24:16 2 Judge in West Texas and he always said, I make oral rulings on  
11:24:21 3 oral motions.

11:24:22 4 MR. FINN: Okay. I got you loud and clear. I'll file  
11:24:25 5 it today.

11:24:25 6 THE COURT: You can file Bruton, even though you're way  
11:24:28 7 late, but I'll rule on it one way or the other.

11:24:30 8 MR. FINN: Okay. Judge, I've just got one last thing  
11:24:32 9 if it's okay with you. I'm asking for permission.

11:24:36 10 THE COURT: Sure. That's why I ask y'all here.

11:24:40 11 MR. FINN: I've got another trial set, federal case in  
11:24:43 12 the Eastern District of Texas before Judge Crone. I thought we  
11:24:46 13 were going to work it out, but it's starting to look like a trial  
11:24:49 14 and it's -- if it goes, it will probably last three to four  
11:24:53 15 weeks. It's a -- almost a billion-dollar oil and gas case with  
11:24:58 16 several defendants.

11:25:02 17 I'm looking for your guidance because --

11:25:06 18 THE COURT: My guidance is we're starting after months  
11:25:10 19 of negotiations with all of you to get a date that everybody  
11:25:15 20 could get. And everybody wasn't happy with this, but nobody  
11:25:18 21 could cut their wrists and let all their blood out to avoid it.  
11:25:27 22 So it's starting on the 15th. If you're not here, your client  
11:25:30 23 better have a lawyer here.

11:25:32 24 MR. FINN: Okay. Can I ask you, Judge, would you be  
11:25:34 25 okay if Judge Crone called you?

11:25:36 1 THE COURT: Sure.

11:25:37 2 MR. FINN: Okay.

11:25:38 3 THE COURT: Sure. Judges call me all the time. I've  
11:25:40 4 worked with Travis County judges all the time and we work it out.  
11:25:43 5 I rarely have to use my muscle, but I'll use my muscle on this  
11:25:46 6 trial, of course.

11:25:47 7 MR. FINN: Okay. Thank you, Judge.

11:25:48 8 THE COURT: Yes, sir.

11:25:53 9 Okay. We go to Zulema Trevino and do you have any  
11:26:01 10 discovery problems now?

11:26:03 11 MR. REYES: Good morning, your Honor. Gabriel Reyes.  
11:26:05 12 I'm here for Ms. Zulema Trevino. And co-counsel Clint Broden  
11:26:09 13 filed this motion to compel. I believe there's been some  
11:26:12 14 misunderstanding. Mr. Broden thought there was a standing order  
11:26:16 15 of discovery that applied and the government had 20 days to  
11:26:19 16 produce certain documents. I'm learning here today there's a  
11:26:22 17 certain tradition observed here in Austin that don't make that  
11:26:27 18 standing order applicable.

11:26:30 19 I think Mr. Finn has covered these issues. And if I've  
11:26:34 20 heard correctly, I think the Court has made its rulings.  
11:26:39 21 However, I think it's still my duty to stand up and say that  
11:26:43 22 we're concerned that if these Giglio materials get produced  
11:26:47 23 Friday before trial and the FBI rap sheets get produced the  
11:26:54 24 Friday before trial, we're not going to be able to make effective  
11:26:56 25 use of these materials. And I think that could raise some Brady

11:26:59 1 violations and we're just -- I guess I'll beg a bit harder than  
11:27:04 2 Mr. Finn.

11:27:05 3 THE COURT: How long is it going to take you to go  
11:27:09 4 through an FBI whatever it is and select something for  
11:27:16 5 cross-examination? Thirty minutes?

11:27:23 6 MR. REYES: Well, given the geographical --

11:27:25 7 THE COURT: Do you read slow? Don't give me this. I'm  
11:27:30 8 going to get you that material. I've got some discretion and  
11:27:34 9 they have to -- the U.S. Attorney's Office has to come into my  
11:27:37 10 courtroom all the time. So they certainly understand that I want  
11:27:41 11 an open trial, and they're going to get that stuff to you. Now,  
11:27:46 12 the fact that you may have to work the weekend before trial is  
11:27:49 13 tough. I'll be down here, I'll be working, and I'm not getting  
11:27:53 14 paid for it. So I'll get you the materials before so that you  
11:27:59 15 should have enough time to cross-examine any of the witnesses of  
11:28:06 16 the government.

11:28:06 17 That's the deal I made in 1991. Wasn't very popular  
11:28:11 18 then. Everybody had to file motions, nine motions, ten motions.  
11:28:15 19 And I have a scheduling order as far as pretty open discovery,  
11:28:20 20 unless there have been a few cases where the government has filed  
11:28:22 21 a notice that they do not have open discovery. But you're going  
11:28:30 22 to have all of the -- you're going to get the discs in advance,  
11:28:37 23 14 days?

11:28:38 24 MR. GARDNER: Probably sooner than that, your Honor.

11:28:39 25 THE COURT: You've already got some discs, I will

11:28:42 1 guess. The government gives them as they can. They have  
11:28:47 2 probably -- you know, I have cases right now that come up to  
11:28:51 3 trial and I have to postpone them a week because the government  
11:28:55 4 can't even get lab reports on the verification that they're  
11:29:01 5 dealing with cocaine, or methamphetamine, or whatnot. It's just  
11:29:08 6 a busy time right now. And the government, just like the courts,  
11:29:12 7 are limited in cash. Congress is not very generous right now.

11:29:19 8 So you're going to get your reports. Is there anything  
11:29:22 9 specific that you want that you feel compelled to say in your  
11:29:26 10 motion to compel?

11:29:27 11 MR. REYES: Well, I believe Mr. Broden laid out the PSR  
11:29:31 12 reports, which I believe even the Court has acknowledged could  
11:29:37 13 present some difficulties for the government. We're looking for  
11:29:39 14 prior judgments in the United States and in Mexico. The  
11:29:44 15 allegations here cover a broad geographical scope.

11:29:46 16 THE COURT: Judgments in Mexico?

11:29:50 17 MR. REYES: That would go to the reliability of the  
11:29:52 18 witnesses in cross-examination.

11:29:55 19 THE COURT: It's a new one on me. You've got any  
11:29:58 20 judgments in Mexico?

11:30:01 21 MR. GARDNER: I wish I had that power, your Honor. I  
11:30:03 22 would probably resolve this case.

11:30:04 23 THE COURT: If you acquire the power, would you please  
11:30:06 24 call this gentleman's associate and --

11:30:08 25 MR. GARDNER: I will, your Honor.

11:30:08 1 THE COURT: Thank you.

11:30:11 2 MR. REYES: A criminal here is a criminal there. But.

11:30:14 3 THE COURT: I'm not going to kill the messenger. Go

11:30:16 4 ahead.

11:30:17 5 MR. REYES: The tape-recorded conversations, I believe

11:30:21 6 that issue's been addressed. A-files, I'm not sure that issue

11:30:25 7 has been addressed.

11:30:26 8 MR. GARDNER: Mr. Finn has put that in one of his

11:30:29 9 motions, your Honor. I believe I'm going to disclose any -- I

11:30:32 10 don't know about the A-file, but any promises with respect to

11:30:34 11 immigration I'll disclose as part of the Giglio material, Friday

11:30:39 12 before trial.

11:30:42 13 MR. REYES: And just the government has rightly noted

11:30:45 14 we have access to trial transcripts and plea colloquies, and we

11:30:49 15 can order those transcripts. It's hard to do that type of

11:30:52 16 business on a Friday afternoon when the government shuts down for

11:30:55 17 the weekend, and we're not sure how we'd be able --

11:30:58 18 THE COURT: What trial transcripts are you talking

11:31:00 19 about?

11:31:01 20 MR. REYES: For --

11:31:01 21 THE COURT: Transcripts of rearraignments?

11:31:04 22 MR. REYES: Exactly.

11:31:05 23 THE COURT: Well, those court reporters love the

11:31:09 24 lawyers who order them.

11:31:11 25 MR. GARDNER: Your Honor, I'm sorry --

11:31:12 1 THE COURT: You've got the date of them. If the  
11:31:14 2 government has them, I don't have any objection, of course, the  
11:31:17 3 government giving you copies. But.

11:31:19 4 MR. GARDNER: I don't have -- what I believe the  
11:31:21 5 misunderstanding is is I've identified the one cooperator and the  
11:31:25 6 cause number, and they can go and order the transcripts today if  
11:31:28 7 they want to order them today.

11:31:32 8 THE COURT: And you divide those up, you could do one  
11:31:35 9 and everybody can get a copy, and another one can do another one  
11:31:38 10 and get a copy. And if they're filed the day the court reporter  
11:31:44 11 certifies it, then they're available anywhere, unless they're  
11:31:48 12 sealed. And if they're sealed, then you have to get the  
11:31:52 13 government to file a motion to unseal it.

11:31:56 14 MR. REYES: So is the government saying there's only  
11:31:58 15 one cooperator in the case?

11:32:00 16 THE COURT: I couldn't hear that.

11:32:01 17 MR. REYES: Is the government saying there's only one  
11:32:03 18 cooperator in the case?

11:32:04 19 THE COURT: There's only one cooperator he's  
11:32:06 20 identified, as I understand it.

11:32:07 21 MR. REYES: Okay. No other cooperators will show up at  
11:32:09 22 trial to testify.

11:32:10 23 THE COURT: Do you understand English?

11:32:13 24 MR. REYES: I do.

11:32:14 25 THE COURT: There's only been one identified today. He

11:32:19 1 may identify others up until Friday before trial.

11:32:25 2 MR. REYES: And those are the ones we're concerned  
11:32:27 3 about, your Honor.

11:32:28 4 THE COURT: Okay. All right.

11:32:31 5 MR. REYES: But I believe the Court has made its  
11:32:33 6 rulings and --

11:32:34 7 THE COURT: I'll make them in writing, too.

11:32:37 8 MR. REYES: Thank you, your Honor.

11:32:43 9 THE COURT: Okay. Then we have Colorado-Cessa and the  
11:32:48 10 depositions in Mexico.

11:32:55 11 MR. DEGEURIN: Yes, your Honor. We're requesting that  
11:32:58 12 you authorize depositions so that we could go down and take the  
11:33:06 13 witnesses' depositions in Mexico.

11:33:07 14 THE COURT: Why can't they come up here?

11:33:10 15 MR. DEGEURIN: Because we can't make them come up here.

11:33:14 16 THE COURT: You can't make them give depositions in  
11:33:18 17 Mexico.

11:33:19 18 MR. DEGEURIN: But they're willing to give -- at least  
11:33:22 19 two.

11:33:22 20 THE COURT: I've read your proffer and I've read the  
11:33:25 21 government's response, and I don't see that they're material in  
11:33:29 22 any way, shape or form. The government's already acceded the  
11:33:34 23 fact that if you want to take depositions, they will allow these  
11:33:38 24 people to come over here where they will be sworn by appropriate  
11:33:42 25 authority and give a deposition. Then if they don't come back,



11:33:46 1 you will have that. But I'm not going to order any depositions  
11:33:51 2 in Mexico. I lived on the border long enough to know that that's  
11:33:55 3 not going to happen. I did make motions many times in federal  
11:33:59 4 court, by the way, for depositions in Mexico. Never won one.

11:34:06 5 MR. DEGEURIN: I realize the risk in this, but may I  
11:34:11 6 weigh in on your preliminary decision?

11:34:14 7 THE COURT: You wanted to get witnesses who were going  
11:34:19 8 to testify as to this alleged trouble on Mr. Cessa's ranch? So.

11:34:32 9 MR. DEGEURIN: Well, let me look at what's not in the  
11:34:35 10 motion -- you've read the motions, you've read the response, so  
11:34:38 11 I'm not going to spend time on that. However, the government  
11:34:44 12 takes the position that whatever happened on that ranch -- and  
11:34:50 13 it's misinformation, I believe, that the agent was given. But if  
11:34:56 14 they're going to -- they say -- the government takes the position  
11:35:00 15 and I happen to agree with this, that that information about this  
11:35:06 16 incident that happened where some Zetas were arrested after being  
11:35:13 17 chased by --

11:35:15 18 THE COURT: Some sort of chase.

11:35:16 19 MR. DEGEURIN: Yeah, yeah. If they say that's  
11:35:18 20 collateral and I believe they use the word "immaterial" and  
11:35:22 21 "irrelevant" to the trial, then they should not bring it to the  
11:35:29 22 trial, and we won't have to go down and take depositions of the  
11:35:31 23 people that were actually present. And so --

11:35:36 24 THE COURT: How is the government going to get it into  
11:35:38 25 evidence if they don't bring people?

11:35:42 1 MR. DEGEURIN: Well, I don't know.

11:35:45 2 MR. GARDNER: We've requested certain individuals.

11:35:47 3 One, at least, we believe will testify that they were on the  
11:35:49 4 ranch and the Zetas were on the ranch when they conducted the  
11:35:51 5 raid. It wasn't some drive-by. Is that what you call it?

11:35:55 6 Drive-by? Drive-in?

11:35:57 7 MR. DEGEURIN: Well, neither you and I really know what  
11:35:59 8 happened. But there are some witnesses down there that do and  
11:36:03 9 that's what I -- you know, your Honor, allowing the depositions  
11:36:09 10 doesn't mean it's going to end up being in court. You've tried  
11:36:13 11 both civil and criminal cases. You know that. But if we're  
11:36:18 12 denied even the opportunity to take the deposition.

11:36:21 13 THE COURT: You're not.

11:36:22 14 MR. DEGEURIN: Well.

11:36:23 15 THE COURT: All you have to do -- the government will  
11:36:25 16 fix it up -- you could have them go to El Paso, be deposed, or  
11:36:30 17 Laredo. The government will depose them under the Federal Rules  
11:36:34 18 of Criminal Procedure. I'll authorize the order. But it smells  
11:36:41 19 too fishy to me if you can't get them to come over here and give  
11:36:45 20 a deposition. If they're willing to give a deposition in Mexico,  
11:36:49 21 sworn testimony is sworn testimony.

11:36:51 22 Now, if they're afraid of coming up over here and  
11:36:56 23 giving a deposition and going home, that's no more fearful than  
11:36:59 24 giving a deposition at home and coming up here. I'll allow you  
11:37:04 25 that. Which is more than I ever got in 30 years of trying

11:37:08 1 lawsuits to take foreign depositions, except in civil cases where  
11:37:14 2 I got special orders or I went through the ambassadors.

11:37:21 3 MR. DEGEURIN: It's going to be safe. I mean, we can  
11:37:23 4 do it at the embassy, the prosecutor can be there and --

11:37:25 5 THE COURT: That's going to be my ruling, Mr. DeGeurin.

11:37:30 6 MR. DEGEURIN: All right. Now, if there was a  
11:37:33 7 suggestion that the government could get a parole, I believe they  
11:37:36 8 call it.

11:37:37 9 THE COURT: A what?

11:37:38 10 MR. DEGEURIN: A parole. They can parole a man for  
11:37:40 11 this. If there's difficulty with that, can I reconsider it?

11:37:43 12 THE COURT: Sure. You do that all the time. The  
11:37:48 13 government can facilitate with the folks at the border to bring  
11:37:52 14 them into a city. You can do it in Laredo. You could do it in  
11:37:58 15 El Paso. Probably do it at Brownsville. Come in for the day,  
11:38:03 16 leave during that night. It can be in custody and come in, give  
11:38:09 17 the deposition and go back. It happens the same thing when  
11:38:15 18 people get sick or family members, the government can go to the  
11:38:18 19 border and you can get permission for 72 hours, or that type of  
11:38:22 20 thing. In the government's response, they are willing to do  
11:38:26 21 that.

11:38:27 22 MR. DEGEURIN: I saw that, but if there's a difficulty  
11:38:29 23 there, can I revisit this with the Court?

11:38:31 24 THE COURT: You can.

11:38:32 25 MR. DEGEURIN: I'm trying to do it --

11:38:33 1 THE COURT: I put deadlines to try to keep the lawyers  
11:38:35 2 from inundating us all with paper. Looks like we've worked out  
11:38:40 3 pretty much everything that's in a short period of time. But  
11:38:45 4 I've never denied any motions that are filed. I'll rule on them  
11:38:49 5 on the merits when and if it's necessary. So the answer is at  
11:38:57 6 any time you want to file something, you have the right and I  
11:39:00 7 will accommodate it.

11:39:03 8 MR. DEGEURIN: That's all I have, Judge.

11:39:09 9 MR. ESPER: Your Honor, may I approach?

11:39:10 10 THE COURT: You may.

11:39:12 11 MR. ESPER: Your Honor, Richard Esper on behalf of Mr.  
11:39:14 12 Huitron, your Honor. Good morning.

11:39:16 13 THE COURT: Good morning.

11:39:17 14 MR. ESPER: There was a matter that was bought up with  
11:39:18 15 respect to jail calls. My client is not in jail, but obviously  
11:39:21 16 other defendants are. And so, I'm having a concern about  
11:39:26 17 conversations that the jail is recording, turning over to the  
11:39:29 18 government which they intend to possibly introduce against that  
11:39:33 19 particular defendant. I just want to be able to have leave of  
11:39:36 20 court to file a possible Bruton motion if, in the course of that  
11:39:40 21 conversation, Defendant A is saying something about my client,  
11:39:44 22 which, of course, creates Bruton. They're not coconspirator  
11:39:48 23 statements because it's post-conspiracy. And I just want to have  
11:39:51 24 leave of court to be able to file such a --

11:39:53 25 THE COURT: How do you know they're not coconspirators?

11:39:56 1 MR. ESPER: Because the conspiracy is terminated and  
11:39:58 2 now they're -- these are jail -- these are calls from the jail.

11:40:02 3 THE COURT: I don't know what the future holds.

11:40:10 4 MR. ESPER: Well, I just want to be able to have leave  
11:40:11 5 of court.

11:40:12 6 THE COURT: Texas may have a good football team next  
11:40:14 7 year, doubt it, but they might.

11:40:17 8 MR. ESPER: Your Honor, I've seen too many times where  
11:40:19 9 these jail calls, an individual is making reference to another  
11:40:21 10 codefendant.

11:40:22 11 THE COURT: You give me something specific, I'll make a  
11:40:24 12 ruling on it.

11:40:25 13 MR. ESPER: Okay. I just wanted to alert the Court to  
11:40:28 14 that if it occurs.

11:40:29 15 THE COURT: There's always a Bruton motion or two in  
11:40:31 16 conspiracy cases. And you know how liberal the circuit is on it.

11:40:41 17 MR. ESPER: I do, your Honor. Thank you.

11:40:43 18 MR. GARDNER: Your Honor, may I approach the bench with  
11:40:45 19 Mr. Mario Flores?

11:40:47 20 THE COURT: You may.

11:40:56 21 (At the bench, off the record.)

11:41:45 22 MR. GARDNER: Your Honor, the only other issue I  
11:41:47 23 have --

11:41:47 24 THE COURT: It's a lot better to go afterwards.

11:41:50 25 MR. GARDNER: Yes, your Honor.

1           Your Honor, the only other housekeeping matter I have  
2 is as defense counsel are aware, and I would echo Mr. Finn, I  
3 haven't had any issues with any of them, there are substantial  
4 number of documents. As I put in one of my responses, we're  
5 attempting to narrow that down to our trial documents. Obviously  
6 all the attorneys, as I've put in all my discovery letters, have  
7 had the opportunity to visit me anytime and look at the things.  
8 But I am going to ask the Court or just inform the Court that I'm  
9 going to need their assistance with the business record  
10 affidavits so that we can make that part of the trial smooth up  
11 front.

12           So I just want to make sure that since I have them all  
13 here together to let the Court know that's the way we're working  
14 to make it go as smooth as possible.

15           THE COURT: Generally in the Western District, for  
16 counsel who practice outside the western district, that is a  
17 tendency that we try to do. As you know, the Western District  
18 has more criminal and civil cases than any district in the United  
19 States, period, and we're still two judges short for four years.  
20 And Austin has the heaviest-weighted docket in the nation by far.  
21 So I do ask the lawyers, both civilly as well as on criminal  
22 cases, to cooperate with each other to give us enough time.

23           Right now, with this brand-new building, I'm hopeful  
24 since we get three extra courtrooms that we can bring in some  
25 senior judges and assist us with the docket. But right now,

11:43:29 1 we're not sure we have the money to do it. For years and years,  
11:43:35 2 we didn't have the facilities and had the money. Now we have the  
11:43:39 3 facilities and don't have the money. That's the way the  
11:43:41 4 government works sometimes. But I do encourage you if there is  
11:43:45 5 an issue -- you don't have many, but if you get the materials and  
11:43:51 6 you look at the affidavits, that I encourage you to make the  
11:43:58 7 agreements so that we get through the evidence as nicely as we  
11:44:01 8 can. But I don't want to make you. You want to make the  
11:44:05 9 objections and look real good in front of the jury, you can.

11:44:08 10 MR. GARDNER: And the government understands our  
11:44:09 11 obligation to identify those trial documents before we engage  
11:44:14 12 with counsel on the affidavits.

11:44:16 13 THE COURT: You know, this case has been put off a way  
11:44:19 14 long time, and it's, you know, been hard on some of the  
11:44:24 15 defendants who are in custody, of course. But it's their lawyers  
11:44:27 16 who put it off because these are busy lawyers. They have all of  
11:44:31 17 these important cases. And I've tried my best to get it on, but  
11:44:38 18 I don't like the fact that it was put off as long as it was, but  
11:44:41 19 we still have a lot of time.

11:44:43 20 So I will ask the government to get the materials,  
11:44:47 21 unless there is a real reason that you can't disclose somebody  
11:44:50 22 until the last minute, to try to get these materials to the  
11:44:52 23 lawyers earlier, if possible. Because it looks like how many are  
11:44:57 24 we going to go to trial? Six? Seven?

11:45:02 25 MR. GARDNER: Undetermined at this point, your Honor.

11:45:03 1 THE COURT: Yeah, I know.

11:45:05 2 MR. GARDNER: Yes, sir. Thank you, sir.

11:45:07 3 THE COURT: Okay. Now, sir.

11:45:14 4 MR. IVY: Your Honor, as you know, my client was not  
11:45:15 5 indicted until December. I was not on the case.

11:45:19 6 THE COURT: Of what year?

11:45:21 7 MR. IVY: Last year, Judge. Little over a month ago.

11:45:25 8 I was -- made my first appearance in the case. I was handed a  
11:45:31 9 large volume of discovery material after the first of this year,

11:45:34 10 about 15 works days ago. I've spent a couple of full days

11:45:38 11 looking at it, and I haven't dented it. I know that there has

11:45:46 12 been -- some other defense counsel have mentioned to me that

11:45:48 13 there is a transcript of a e-mail, I believe, that the government

11:45:55 14 is going to intend to introduce against my client. I think it

11:46:00 15 was mentioned today by Mr. --

11:46:03 16 THE COURT: A transcript of an e-mail.

11:46:06 17 MR. IVY: Yes, your Honor.

11:46:07 18 THE COURT: Okay. In an e-mail.

11:46:12 19 MR. IVY: Yes, your Honor.

11:46:12 20 THE COURT: And inside it, there's a transcript?

11:46:15 21 MR. IVY: No, no. They've transcribed it. I'm sorry,  
11:46:17 22 Judge.

11:46:17 23 THE COURT: Okay, sir.

11:46:19 24 MR. IVY: Spoken badly.

11:46:20 25 THE COURT: That's all right.



11:46:21 1 MR. IVY: If that's true, we may want to challenge the  
11:46:24 2 search. I don't know how it occurred, I don't know enough about  
11:46:28 3 it to say anything. I tried to use diligence to get there, and  
11:46:32 4 I'm not there, Judge. And I want to let you know. I also wanted  
11:46:35 5 to make the Court informed about the possibility that, perish the  
11:46:41 6 thought, I may be well filing a motion for continuance on behalf  
11:46:45 7 of my client.

11:46:45 8 THE COURT: It's America; you can file it. I'll deny  
11:46:45 9 it.

11:46:51 10 MR. IVY: She's going to have --

11:46:51 11 THE COURT: Well, okay. She's going to have a baby?  
11:46:53 12 Is that the deal?

11:46:55 13 MR. IVY: Within 30 days the time the trial is set,  
11:46:58 14 Judge.

11:46:58 15 THE COURT: Well, I can't foresee the future. So we'll  
11:47:02 16 just have to play it by ear. And there's not a thing I can do  
11:47:08 17 about it.

11:47:09 18 MR. IVY: I don't have any evidence to present to the  
11:47:11 19 Court, yet, or I would have already filed the motion, but as soon  
11:47:14 20 as I get some evidence from her doctor, I'll be filing that  
11:47:16 21 motion. And I understand what the Court's going to do, but I  
11:47:20 22 still am going to file the motion.

11:47:21 23 THE COURT: The other thing, though, on a  
11:47:23 24 suppression -- you've got a scheduling order, I assume.

11:47:29 25 MR. IVY: Yes, Judge. And most of the deadlines have

11:47:31 1 passed at the time that I --

11:47:32 2 THE COURT: That's their scheduling order. And as I  
11:47:35 3 say, I don't use the deadlines to eliminate any motion. I just  
11:47:41 4 urge you if you're going to do a motion for a suppression, to do  
11:47:47 5 it as early as possible. It won't bother anybody else, I  
11:47:50 6 suspect, so that I can get it on the calendar.

11:47:55 7 MR. IVY: Mr. Gardner and I are going to meet next  
11:47:57 8 week, your Honor, and I'm sure we could get it -- if there is  
11:47:59 9 such a motion, it will be filed next week.

11:48:02 10 THE COURT: My next big criminal case is on the 11th.  
11:48:08 11 One of the prime defendants died yesterday. So you never know  
11:48:12 12 what's going to happen one way or the other. But earlier is  
11:48:17 13 better.

11:48:18 14 MR. IVY: Understand, your Honor. Thank you.

11:48:20 15 THE COURT: All right. Counsel, anything else that  
11:48:23 16 defense wish to talk about, since we're here together? Yes, sir.

11:48:37 17 MR. FINN: Judge, one last housekeeping issue. I've  
11:48:40 18 had a very difficult time being able to work with my client.  
11:48:46 19 He's in the Bastrop County jail. He's in solitary confinement.  
11:48:51 20 Thanks to your phone call, they've been -- the jail staff have  
11:48:55 21 been wonderful. They're responsive, they put me in a room. I  
11:48:58 22 call ahead, we make reservations. So that's going great.

11:49:03 23 The problem is there's a protective order in this case,  
11:49:05 24 so I can't leave anything with my client for him to do his  
11:49:10 25 homework on in his solitary confinement other than his basically

11:49:14 1 bank records. And I've got a stack of discovery that takes quite  
11:49:20 2 a bit of time to go through and I would really -- I need to be  
11:49:23 3 able to give that to him so that he can read it in his solitary  
11:49:27 4 cell because they keep kicking me out because I'm taking too much  
11:49:32 5 time. In other words, Judge, they say, well, Mr. Finn, you're  
11:49:35 6 not the only attorney with a client in here. We need this room  
11:49:39 7 for other attorneys. And I think that if we can cobble together  
11:49:45 8 something that would satisfy the government, it might work a  
11:49:48 9 little bit better.

11:49:50 10 THE COURT: Have you gone over to Mr. Gardner and sat  
11:49:52 11 down and said, here's the discovery and I really need to show my  
11:49:59 12 client this?

11:50:00 13 MR. FINN: We've had that conversation.

11:50:03 14 MR. GARDNER: Your Honor, I have no objection to Mr.  
11:50:04 15 Finn providing his client with all the bank records. We've made  
11:50:07 16 that specifically searchable so the attorneys wouldn't waste too  
11:50:12 17 much time. They can keyword search. I have no problem. That's  
11:50:15 18 not under protective order. My only issue is having a affidavit  
11:50:18 19 that contains information from cooperating informants in the  
11:50:21 20 jail.

11:50:22 21 THE COURT: Well, I understand that. But I mean, there  
11:50:25 22 may be some things that there are no problem that y'all could  
11:50:29 23 work out. And if you can't work out the problem, then feel free  
11:50:33 24 to file a motion.

11:50:34 25 MR. FINN: Because the banks records are only a small

11:50:36 1 piece of the evidence.

11:50:38 2 THE COURT: They're gone. You can show that. What I'm  
11:50:42 3 saying is be a real lawyer. Go over there or y'all go out and  
11:50:48 4 get coffee. You tell him exactly what you want your client to  
11:50:52 5 look at. He will tell you. He's not short of decisions. He'll  
11:50:58 6 say, these things are all right and these things are not. Then  
11:51:03 7 file a motion, I'll look at them, and I'll make a decision.

11:51:06 8 MR. FINN: Judge, with all due respect, I am a real  
11:51:08 9 lawyer. I've had that conversation and the answer is no. Only  
11:51:13 10 financial information. That won't cut it. That's why I'm asking  
11:51:17 11 for your help. And, frankly, that comment about be a real  
11:51:24 12 lawyer, that's out of line.

11:51:26 13 THE COURT: All right. Every day I sit up here, every  
11:51:32 14 day -- you're not here every day, so I apologize. But every day,  
11:51:37 15 I sit up here for hours and work on problems that lawyers could  
11:51:43 16 have worked out in ten minutes if they would meet each other,  
11:51:46 17 instead of sending e-mails and would work those things out.

11:51:50 18 MR. FINN: This is not one of those issues.

11:51:52 19 THE COURT: All right.

11:51:58 20 MR. GARDNER: I'll sit down with Mr. Finn again. We  
11:52:00 21 could talk about it and that way we could resolve what can be  
11:52:03 22 resolved, and if not, we can file the motion and request the  
11:52:06 23 Court to make a decision from there.

11:52:08 24 THE COURT: File a motion under seal and tell me what  
11:52:10 25 y'all can't agree on, and I may require you to come here and

11:52:17 1 explain it to me. But I'll work it out.

11:52:18 2 MR. FINN: Okay. Thank you, Judge.

11:52:19 3 THE COURT: Yeah. Any unreal lawyers want to make a  
11:52:27 4 comment? All right.

11:52:30 5 Counsel, I hope I don't have to take your time again  
11:52:32 6 before jury selection, but if there's anything that you want to  
11:52:36 7 discuss, let me know. If you think it will be beneficial, I'll  
11:52:40 8 schedule another hearing. But I know from all of the motions for  
11:52:45 9 continuances, y'all are all busy. And I can assure you that  
11:52:49 10 we're pretty busy here.

11:52:51 11 So watch the electronic filings. If somebody files a  
11:53:00 12 motion, I don't require you to all be here if you're not  
11:53:06 13 interested in a motion. But watch it, it may be a motion that  
11:53:09 14 you want to be here on. And if I set another hearing, of course,  
11:53:15 15 I'm glad to see you or just the movant and the government.

11:53:18 16 Anything further from the government?

11:53:20 17 MR. GARDNER: Not from the government, your Honor.  
11:53:21 18 Thank you.

11:53:21 19 THE COURT: All right. We're in recess.

20 (End of proceedings.)

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UNITED STATES DISTRICT COURT)  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Official Court Reporter, United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 12th day November, 2013.

/s/Lily I. Reznik  
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